

NO. 49859-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON, Respondent

v.

RONLEY SANTER, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-01460-7

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BRIEF OF RESPONDENT

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Attorneys for Respondent:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

KELLY M. RYAN, WSBA #50215  
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney  
1013 Franklin Street  
PO Box 5000  
Vancouver WA 98666-5000  
Telephone (360) 397-2261

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## **RESPONSE TO ASSIGNMENTS OF ERROR**

### **I. The trial court did not err in refusing to give Santer's proposed lawful use of force jury instruction.**

#### **STATEMENT OF THE CASE**

The State charged Ronley Santer (hereafter "Santer") with robbery in the first degree, and/or being an accomplice to robbery in the first degree, based on an incident that occurred on July 6, 2016. CP 3-4.

Santer went to trial on the above listed charge on December 5, 2016. RP 4. The victim, Colin Shanklin, testified that on the evening of July 6, 2016 he left on his bike from his home in Vancouver, Washington. RP 133, 139. He went down the street to get food and beer, and on his way home he rode past a park in front of his home. RP 136, 139-40. A group of three men in the park flagged Mr. Shanklin over. RP 142. They asked if he had any cigarettes, and he stopped and gave them some. RP 142-44.

One of the men told Mr. Shanklin he liked his bike and then grabbed onto the bike. RP 146. That man then attacked Mr. Shanklin by punching him in the head. RP 146. One of the other men joined the attack and took the first assailant and Mr. Shanklin to the ground. RP 146, 180. Both assailants then punched and kicked Mr. Shanklin while he was on the ground. RP 146-48. Mr. Shanklin felt that he couldn't overcome his attackers, so he pulled out a knife from his pocket. RP 150. He poked the

second assailant who took him to the ground in the leg, and the assailant got off of him. RP 150-51, 181. Mr. Shanklin then ran home for help and did not have his bike. RP 151. He then saw one of the assailants riding away on his bike. RP 152.

From the attack, Mr. Shanklin had blood vessels in his eyes blown out, a lump on the side of his head, a hurt hip, a bruise on his leg, bumps on his head, and a black eye. RP 153. Police responded to the scene and stopped Santer, who had been running away from the scene. RP 204-06. Santer was bleeding from a knife wound on his leg. RP 206. The police showed Santer to Mr. Shanklin, and Mr. Shanklin identified Santer as one of his assailants. RP 254.

Santer testified at trial that Mr. Shanklin approached Santer and two of Santer's friends. RP 312-13. He testified that Mr. Shanklin asked if he and his friends had anything for sale. RP 317. He also testified that after his friends told Mr. Shanklin to leave, he heard a punch and saw Mr. Shanklin on top of his friend. RP 318-19. Santer testified that he tried to help his co-worker by hitting Mr. Shanklin. RP 320-21. He testified he did not know what happened to the bike. RP 324. He also testified that he ran away after the fight. RP 338.

At trial, Santer requested a jury instruction for defense of others. RP 363-64, 366. The State objected and cited *State v. Lewis*, 56 Wn. App.

230, 233 P.3d 891 (2010), for the proposition that self-defense and lawful use of force are not applicable to a charge of robbery. RP 364-65. The trial court declined to give Santer's proposed instruction, ruling that intent to inflict bodily injury was not an element of robbery. RP 384-86. The trial court also relied on *Lewis* in refusing to give the instruction. RP 385-86.

The jury returned a guilty verdict on the robbery in the first degree charge. RP 454; CP 46. This timely appeal follows.

#### ARGUMENT

**I. The trial court did not err in refusing to give Santer's proposed lawful use of force jury instruction.**

Santer claims that the trial court erred when it refused to give his proposed jury instruction for lawful use of force, specifically for the defense of others. Santer claims that his right to present a defense was infringed when the trial court refused to give the proposed instruction. However, the trial court did not err in refusing to give the instruction, because the lawful use of force instruction is inapplicable to a charge of robbery in the first degree. His claim fails.

Lawful use of force in defense of others is an affirmative defense under RCW 9A.16.020(3). *McBride v. Walla Walla County*, 95 Wn. App. 33, 39-41, 975 P.2d 1029 (1999); citing *State v. Thompson*, 13 Wn. App. 1, 6, 533 P.2d 395 (1975). "A party can lawfully use force to aid another

who he reasonably believes is about to be injured [but] the party may only use such force and means as a reasonably prudent person would use under the same or similar conditions.” *State v. Watkins*, 61 Wn. App. 552, 561, 811 P.2d 953 (1991). Proving defense of others or self-defense negates the *mens rea* of a crime. *State v. Arth*, 121 Wn. App. 205, 212 n. 15, 87 P.3d 1206 (2004).

In general, a court must give an instruction supporting a party’s theory of the case, but only if the law and the evidence support it. *State v. May*, 100 Wn. App. 478, 482, 997 P.2d 956 (2000); citing *State v. Birdwell*, 6 Wn. App. 284, 297, 492 P.2d 249 (1972). A trial court’s refusal to give a requested jury instruction based on a ruling of law is reviewed de novo. *State v. White*, 137 Wn. App. 227, 230, 152 P.3d 364 (2007) (citing *State v. Walker*, 136 Wn.2d 767, 772, 966 P.2d 883 (1998)). Santer’s proposed instruction on lawful use of force was denied by the trial court on legal grounds, because the trial court ruled that there was no intent to inflict the bodily injury element in robbery. RP 384-85. The trial court was correct, because defense of others does not negate the *mens rea* of robbery.

“A person is guilty of robbery in the first degree if... in the commission of a robbery or of immediate flight therefrom, he or she...inflicts bodily injury.” RCW 9A.56.200(1)(a)(iii). The only “intent

required to prove robbery in the first degree is intent to deprive the victim of property.” *State v. Decker*, 127 Wn. App. 427, 431, 111 P.3d 286 (2005) (citing *State v. Byers*, 136 Wn. App. 620, 622, 241 P. 9, 10 (1925); *State v. Carter*, 4 Wn. App. 103, 109, 480 P.2d 797, 797 (1971)). “Intent to cause bodily injury is not an element of robbery in the first degree as defined in Washington.” *Decker*, 127 Wn. App. at 431 (citing *State v. McCorkle*, 88 Wn. App. 485, 501, 945 P.2d 736 (1997), *affirmed*, 137 Wn.2d 490, 973 P.2d 461 (1999)).

Santer’s claim is foreclosed by *Lewis*, 156 Wn. App. 230, 239, 233 P.3d 891 (2010), where this Court held that proof of self-defense does not negate an intent element of robbery. In *Lewis*, the defendant was charged with robbery in the first degree for assaulting the victim in an apartment and stealing the victim’s money. *Id.* at 234. At trial, the defendant testified that he assaulted the victim in self-defense and that he did not take the victim’s money, but no self-defense instruction was ever requested. *Id.* at 235-36.

On appeal, Lewis argued that the trial court erred in failing to instruct the jury on the lawful use of force defense. *Id.* at 238. This Court held that Lewis was not entitled to such an instruction, because robbery has no intent to inflict bodily injury element. *Id.* at 239. This Court reasoned that robbery included actual infliction of bodily injury as



element, not the intent to inflict such an injury. *Id.* Therefore, proof of self-defense “fails to negate a corresponding intent element of the crime of robbery.” *Id.*

Cases following *Lewis* have echoed the holding that lawful use of force, either as self-defense or defense of others, is not available for a robbery charge. In *State v. Hernandez*, 185 Wn. App. 1002, Slip Op. 44771-1-II (December 16, 2014),<sup>1</sup> this Court held that defense of others was not a defense to the charge of attempted robbery in the first degree. *Id.* at 2. Relying on *Lewis*, this Court stated that “attempted first degree robbery does not require the specific intent to inflict bodily injury; therefore there is no intent element that can be negated by a claim of lawful use of force.” *Hernandez*, 185 Wn. App. 1002 Slip Op. 44771-1-II at 2; citing *Lewis*, 156 Wn. App. at 239. In *State v. Jerue*, 196 Wn. App. 1057, Slip Op. 74027-0-I, 4 n. 21 (November 14, 2016),<sup>2</sup> the Court mentions in a footnote and cites to *Lewis*, 156 Wn. App. at 239, that “self-defense is not available as a defense to robbery.” These cases show that defense of others is not available to negate the intent involved in a robbery.

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<sup>1</sup> GR 14.1(a) states in part, “...unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.”

<sup>2</sup> GR 14.1(a) states in part, “...unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate.”

Santer was not entitled to defense of others instruction in this case. He was charged with robbery, which only requires the intent to deprive a person of their property. This intent element cannot be negated by a lawful use of force defense. Furthermore, there is no intent to use force associated with the charge of robbery. Because of this, as the cases above demonstrate, defense of others is not a defense to robbery. Therefore, the trial court did not err in denying Santer's proposed instruction. His claim fails.

Santer is correct that there is an intent element the State must prove for a robbery charge, but it does not entitle him to a defense of others instruction. The *mens rea* that the State must prove for a robbery charge is the intent to steal. But a lawful use of force defense only negates a use of force *mens rea*. It does not follow that a person may lawfully steal from another when they reasonably fear they or someone else are about to be injured. This is illogical and contrary to established law in Washington. The intent that is negated under a lawful use of force defense is only the intent to use force, but there is no intent to use force in a robbery. Therefore, Santer cannot claim his use of force was lawful in this case.

Santer additionally argues that he was entitled to a lawful use of force instruction because he was charged as an accomplice. However, the *mens rea* for accomplice liability is knowledge of the crime being

committed, which cannot be negated by a lawful use of force defense. Furthermore, the fact that he was charged as accomplice does not change the underlying mental state of robbery: intent to steal. A lawful use of force defense cannot negate the intent to steal, even as an accomplice, and Santer's claim fails.

A person is guilty as an accomplice to a crime if "with knowledge that it will promote or facilitate the commission of the crime... he solicits, commands, encourages, or requests such other person to commit it... or aids or agrees to aid such other person to commit it." RCW 9A.08.020(3). The *mens rea* for accomplice liability is knowledge of the charged offense. *State v. Roberts*, 142 Wn.2d 471, 510, 14 P.3d 713 (2000), *amended on denial of reconsideration*. "[A]n accomplice need not have knowledge of each element of the principal's crime in order to be convicted under RCW 9A.08.020. General knowledge of 'the crime' is sufficient." *Id.* at 513.

The *mens rea* required to be an accomplice to robbery is the knowledge that the principle is committing a robbery. For a lawful use of force defense to apply here, the lawfulness of the use of force would have to negate Santer's knowledge of the robbery. This does not comply with RCW 9A.16.020(3), because the lawful use of force defense only negates an intent to use force. It does not negate general knowledge of a crime being committed. Therefore, lawful use of force cannot be used as a

defense to being an accomplice to any crime. Santer's claim that he was entitled to a lawful use of force instruction because he was charged as an accomplice fails.

Santer's claim that a lawful use of force instruction was required because he was an accomplice is further foreclosed by the elements of robbery in the first degree. In *Hernandez*, the defendant argued that attempted robbery was different from completed robbery, thus allowing him a lawful use of force instruction. 185 Wn. App. 1002 Slip Op. 44771-1-II at 2. He argued that there was an intent element to attempt that could be negated by a lawful use of force. *Id.* This Court disagreed and held that attempted robbery in the first degree does not require a defendant intend to inflict bodily injury, but rather "intend to commit robbery and in the course of intending to commit robbery cause bodily injury." *Id.* This Court held that a lawful use of force claim does not negate any intent element of attempted robbery, because it lacks the intent to inflict bodily injury." *Id.* citing *Lewis*, 156 Wn. App. at 239.

The reasoning from *Hernandez* should be applied to this case, because one who acts as an accomplice to robbery lacks any intent to commit bodily injury. Being an accomplice to robbery means that a person has to know robbery was being committed, and in the course of knowing and aiding in the robbery, bodily injury was caused. There is still no intent

to cause any bodily injury. As stated in *Lewis* and *Hernandez*, the charged crime must include some intent to cause bodily injury, but robbery, either as a principal or an accomplice, and attempted robbery lack this intent. Therefore, Santer was not entitled to his proposed jury instruction.

Santer has failed to provide any basis for giving a lawful use of force instruction in this case. Lawful use of force is not a defense available to a charge of robbery in the first degree, as the principle or as an accomplice. The trial court did not err in refusing to give Santer's proposed jury instruction. Santer's claim fails.

#### CONCLUSION

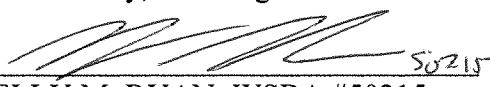
The State respectfully requests this Court affirm Santer's conviction.

DATED this 18 day of September, 2017.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By:

  
KELLY M. RYAN, WSBA #50215  
Deputy Prosecuting Attorney  
OID# 91127

# CLARK COUNTY PROSECUTING ATTORNEY

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## Transmittal Information

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